HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

C-482 No. 489/06

Rajeev A. Masih
& others

Vs
State of Uttaranchal
& others

Approved for reporting.

Not approved for reporting

Date of decision 2.12.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 489 OF 2006

1. Rajeev A. Masih,
   S/o Sri John A. Masih,
2. John A. Masih,
   S/o Sri Aslam Masih,
3. Ms. Florance A. Masih
   W/o Sri John A. Masih,
4. Km. Rachna A. Masih,
   D/o John. A. Masih,
   All R/o 79 Govind Park, Street No. 22, Som Bazar, Chandra Nagar, Delhi-51. .....Applicants

Versus

1. State of Uttaranchal.
2. Ms. Vimmy A. Masih, W/o Rajeev A. Masih,
   D/o Samual Roy, R/o 13/III/,
   Medical Colony Sector-I, B.H.E.L. Ranipur,
   Haridwar, District-Haridwar ....Opp. Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Agarwal, Sr. Advocate, assisted by Sri Gopal K. Verma, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for setting aside the order by which the cognizance has been taken in Case Crime No. 236/2006 ***State v. Rajeev A. Masih & Ors*** under Section 498-A I.P.C. and 3/4 Dowry Prohibition Act.

3. The applicant no. 1 is the husband of the respondent no. 2, applicant no. 2 is the father of the applicant no. 1, applicant no. 4 is the unmarried sister of the applicant no. 1 and applicant no. 3 is the mother of the applicant no. 1.

4. According to the FIR, opposite party no. 2 and applicant no. 1 got married on 28.12.2005 and there was a demand of dowry for a sum of Rs. 4,00,000/- and apart from the said amount, there was also a demand for providing a flat and as such the opposite party no. 2 was subjected to cruelty on account of failure on her part to fulfill the demand of the applicants. The opposite party no. 2 lodged a first information report on 24.03.2006 under Section 498-A and 3/4 of the Dowry Prohibition Act at Police Station Ranipur District Haridwar against all the applicants.

5. A counter affidavit has been filed along with Stay Vacation application stating therein that there was a demand of dowry.

6. The factum of assault was also investigated by the Police and was found to be true.

7. The scope of the interference under Section 482 of the Cr.P.C., therefore, is limited only to the fact that if the FIR does not disclose any cause of action, interference under Section 482 of the Code of Criminal Procedure can be made.

8. In ***State of Haryana and others v. Ch. Bhajan Lal and others AIR 1992 SC 604,*** it has also

been held that whether the allegations in the FIR do constitute cognizance offence, only then the interference under Section 482 of the Cr.P.C. can be made.

9. In ***Medchl Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."*

10. In view of the aforesaid pronouncement of the Apex Court I am not entering into the merit of the controversy in order to short-circuit the trial, it will be open for the trial Court to assess the evidence and record the findings on the basis of the evidence on the record.

11. However, counsel for the applicant has also relied upon the declaration, which has been given at the

time of marriage. It will be open for the applicant to take the plea before the trial Court.

12. So far ladies i.e. applicant no. 3 and 4 are concerned, their bail application shall be considered on the same day. So far as other applicants are concerned, their bail application shall be considered expeditiously.

13. Subject to the aforesaid observation, application under Section 482 of the Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

02.12.2006
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